



Arizona Early Intervention Program

AzEIP Technical Assistance Bulletin #1

PRIOR WRITTEN NOTICE – AN ESSENTIAL SAFEGUARD FOR FAMILIES

(34 CFR §303.403)

I. Introduction

The mission of the Arizona Early Intervention Program (AzEIP) is to enhance the ability of families to support their infants and toddlers with delays or disabilities so that they can thrive in their homes and communities. In order to accomplish this mission, families need to be informed partners in each step of the process of identification, evaluation, placement, and service provision for their child. Families are part of the team, which includes parents (or responsible party for child, such as a legal guardian or surrogate parent), other family members and early intervention professionals, that make the decisions throughout the early intervention process.

Throughout this process, a parent is entitled to certain protections under the Procedural Safeguards of the Individuals with Disabilities Education Act (IDEA), Part C. These protections help families understand their rights in the system so they can be informed team members. Prior Written Notice (PWN) is one element of the procedural safeguards, which is intended to ensure the effective implementation of AzEIP for families. Procedural safeguards are listed below:

- Opportunity to examine records
- **Prior Written Notice**
- Parent consent for the initial evaluation and assessment
- Right to accept or decline services without jeopardy
- Surrogate parents
- Mediation
- Due Process
- System Complaint
- Confidentiality and release of information

The focus of this document is on Prior Written Notice. This is not to be confused with the meeting notice (or written notification) of the date and time of an Individualized Family Service Plan (IFSP) meeting, which is required prior to holding such a meeting under 34 C.F.R. 303.342(d)(2).

II. Background

Learning that your infant or toddler may have a developmental delay or a disability can be an emotional and anxious time for families. Many families have never been involved in a public system of services and supports. The regulations, terms, services, and professionals involved are likely to be new and different. When families are fully informed, better decisions can be made regarding services and supports. Providing procedural safeguards in a family-centered context promotes more positive interactions as families begin to understand the service delivery system and participate as team members.

All procedural safeguards, including PWN, are more than just paper work. They are guides for developing meaningful partnerships with families as they negotiate the early intervention system. Professionals who work with the families and have a clear understanding of procedural safeguards, including PWN, can share with families their importance as partners in the early intervention system.

III. Intent and Purpose of PWN

The basic concept of PWN is to let the family (or other responsible party) know ahead of time about certain changes that the team proposes to make and to give the family the chance to say "yes" or "no" to those changes. The PWN is required so that a family is provided information about the actions being proposed or refused surrounding their child's participation in AzEIP **before** the actions take place. It is intended to give families information so they can make informed choices and decisions in the delivery of supports and services to their child.

The rule of thumb with PWN is that it must be provided to a family **after** the team makes its recommendations and **before** the implementation of those recommendations. (**After** the decision, **B**efore the action.) The "Procedural Safeguards for Families" handbook is to accompany every PWN sent. (Note that if the family has previously received a copy of the booklet, has been informed verbally of their procedural safeguards, and requests not to receive another copy, the service coordinator does not have to give them another copy. The service coordinator must document this in writing in the child's file.) Also, in order for the parent to understand the proposed or refused action, the PWN must be in the native language or other mode of communication of the parent.

IV. Definition and Elements of Prior Written Notice

34 CFR §303.403

(a) General. Written prior notice must be given to the parents of a child eligible under this part a reasonable time before a public agency or service provider proposes, or refuses, to initiate or change the identification, evaluation, or

placement of the child, or the provision of appropriate early intervention services to the child and the child's family.

(b) Content of notice. The notice must be in sufficient detail to inform the parents about –

- (1) The action that is being proposed or refused;
- (2) The reasons for taking the action;
- (3) All procedural safeguards that are available under §§ 303.401-303.460 of this part; and
- (4) The State complaint procedures under §§ 303.510 - 303.512, including a description of how to file a complaint and the timelines under those procedures.

(c) Native Language.

- (1) The notice must be –
 - (i) Written in language understandable to the general public; and
 - (ii) Provided in the native language of the parents, unless it is clearly not feasible to do so.
- (2) If the native language or other mode of communication of the parent is not a written language, the public agency, or designated service provider, shall take steps to ensure that-
 - (i) The notice is translated orally or by other means to the parent in the parent's native language or other mode of communication;
 - (ii) The parent understands the notice; and
 - (iii) There is written evidence that the requirements of this paragraph have been met.
- (3) If the parent is deaf or blind, or has no written language, the mode of communication must be that normally used by the parent (such as sign language, braille, or oral communication).

V. When and How to Provide Prior Written Notice to a Family

A. Evaluations - Prior written notice must be provided to a family before any evaluation to determine the *initial or continuing* eligibility for AzEIP. (PWN is not required for an assessment, such as the annual assessment.) The following are the circumstances when PWN is required concerning evaluations:

- When the team proposes to conduct an initial evaluation to determine a child's eligibility, a family must receive PWN to determine whether or not to proceed with the evaluation. The revised Consent for Evaluation form satisfies both the PWN and parental consent requirements.

Use "Prior Written Notice/Consent for Evaluation" (Feb 05)

- When the team refuses to conduct an initial evaluation to determine eligibility, PWN to the family is needed. This decision usually is made when discussions with the family, a review of available records, and the screening results do not support the need for an evaluation.

Use "Prior Written Notice/Notice of Action" form (Feb 05)

- When the team proposes or refuses to conduct an evaluation to determine whether a child continues to qualify for early intervention services.

Use "Prior Written Notice/Notice of Action" form (Feb 05)

EXAMPLES

1. Lisa is referred to AzEIP after her pediatrician becomes concerned about her development. The team talks with Lisa's family, conducts a screening and suggests that Lisa be evaluated to determine whether she qualifies for AzEIP. PWN **is** required.

2. Lisa is referred to AzEIP after her pediatrician becomes concerned about her development. The team talks with Lisa's family, conducts a screening, reviews available records and proposes that Lisa does not need an evaluation. PWN **is** needed.

3. After six months in AzEIP, Lisa's mother raises a concern about her slow progress toward learning to hold a bottle by herself. The team discusses Lisa's progress toward this outcome and proposes to have an occupational therapist **assess** Lisa. PWN is **not** needed.

4. After a year of receiving services in AzEIP, Lisa has met all of her outcomes and the team feels that she is developing typically. Mom is uncertain about the progress, and the team proposes to **re-evaluate** Lisa to determine whether she continues to qualify for AzEIP. PWN **is** required.

5. After a year of receiving services in AzEIP, Lisa's mother feels Lisa is doing well and asks for an evaluation to determine whether she still qualifies for AzEIP. Lisa has not achieved her IFSP outcomes and the ongoing assessments by the team

members do not indicate that Lisa should be re-evaluated to determine eligibility. PWN is required.

B. Eligibility - Prior written notice must be provided to a family after the assessment and evaluation qualifies a child for AzEIP, but before the team takes any further action. The PWN informs the parent of the reasons why their child was determined eligible or not eligible, and their options if they disagree with this determination. The following are examples of when PWN is needed in the context of an eligibility determination:

- A child is initially determined eligible for early intervention services, and the team proposes to proceed to the IFSP.

Use “AzEIP Eligibility Letter” (eligible) (Feb 05)

- A child is evaluated initially and determined not eligible.

Use “AzEIP Eligibility Letter” (not eligible) (Feb 05)

- After a child has been receiving services, s/he is re-evaluated and no longer qualifies for early intervention services.

Use “AzEIP Eligibility Letter” (not eligible) (Feb 05)

C. Individualized Family Service Plan (IFSP) - Prior written notice is provided to a family at the conclusion of the IFSP meeting (initial and continuing IFSP meetings) to confirm the recommendations that were made during the meeting with the family.

If the team, including the family, agrees to all the recommendations being made, the signature page of the IFSP (the “IFSP Team Page”) may be used as the PWN when all the requirements are followed, as set forth in Number 1 of the “IFSP Team Page.”

Use “IFSP Team Page” of IFSP (Feb 05)

If the family disagrees with the recommendations of the other team members, the Service Coordinator must complete the PWN/Notice of Action describing the action being proposed or refused and the reasons for them.

Use “Prior Written Notice/Notice of Action” form (Feb 05)

The following are other examples of when PWN is required:

1. During the IFSP meeting, a service is requested by the family, and the IFSP team does not agree on the provision or location of this service and refuses to provide it.

Use “Prior Written Notice/Notice of Action” form (Feb 05)

2. During the course of services, the team proposes that a service should be changed (increased, decreased or terminated).

- If everyone on the team, including the family, agrees to the change, the Service Coordinator can, depending on the parent's preference, either: (1) hold an IFSP meeting and have the family initial the changes on the IFSP; or (2) note the changes on the IFSP and date on the "IFSP Team Page" that the family requested the change by phone. Then date the change(s) wherever they occur within the IFSP. The signature of the family at the next IFSP will confirm the changes made.

- If the family does not agree with the other team members' recommendations for a change, then a Prior Written Notice/Notice of Action form must be completed and provided to the family.

3. At the annual IFSP meeting, the team proposes that the home is the most appropriate place to provide supports and services and refuses to provide services at the therapist's office as Mom requested.

Use "Prior Written Notice/Notice of Action" form (Feb 05)
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See Figure 1. for more examples of when PWN is and is not required.

FORMS FOR PROVIDING FAMILIES PRIOR WRITTEN NOTICE

Prior Written Notice/Consent for Evaluation form:

The AzEIP form "Prior Written Notice/Consent for Evaluation" (revised 12/04), is used to obtain consent from the responsible party for the **initial** evaluation of their child. It also serves as the Prior Written Notice because it informs the family of the proposal to evaluate the child and provides the supporting reasons. It includes a copy of "Procedural Safeguards for Families" booklet.

AzEIP Eligibility Letters

These letters, revised 12/04, are used as the PWN for initial and ongoing eligibility determinations. "Procedural Safeguards for Families" booklet also must be included as part of this notice.

Prior Written Notice/Notice of Action form

The "Prior Written Notice/Notice of Action" form has been developed by AzEIP to be used in all other circumstances in which a PWN is needed. Sample Notices of Action are also attached to provide some possible circumstances when the PWN is required. The "Procedural Safeguards for Families" booklet also must be included as part of this notice.

IFSP Team Page

The "IFSP Team Page" has been revised to allow Service Coordinators to provide families with prior written notice using the IFSP when all team members agree to the proposed supports/services or changes to them.

FIGURE 1.

AzEIP Events Requiring Prior Written Notice			
	PWN provided:		AzEIP Form to be used:
	YES	NO	
Identification/Evaluation			“Prior Written Notice/Consent for Evaluation”
Screening		X	
Propose to conduct initial evaluation (for developmental delay and established condition) to determine eligibility	X		
On-going assessment of child’s progress		X	
Annual Assessments		X	
Determine eligibility or ineligibility upon completion of initial assessment and evaluation	X		“AzEIP Eligibility Letter”
Refuse to conduct an initial evaluation	X		“Prior Written Notice/Notice of Action”
Determines eligibility or ineligibility upon completion of re-evaluation (after child has been receiving services)	X		
Placement/Provision of Services			
Propose the types, amounts, and/or location of services as agreed upon by the IFSP team	X		“IFSP Team Page”
Propose to change the types, amounts and/or location of services as agreed upon by the IFSP team	X		
Refuse to provide the types, amounts and/or location of services as determined by the IFSP team.	X		“Prior Written Notice/Notice of Action”
Refuse to change the amounts, types and/or location of services to achieve the outcomes determined by the IFSP team	X		
Propose to discontinue services for a child based on results of evaluation (child no longer meets eligibility criteria for AzEIP).	X		
Child turns 3 and is no longer eligible for AzEIP. PWN is not required by AzEIP at this time because there is no recourse for the family if they disagree with the decision. The child no longer qualifies due to his/her age. (The parents should be fully informed of the age limit eligibility and the options available to them at age 3.) Note that the agency providing service coordination (DDD, ADHS, or ASDB) may have a requirement about providing such notice. Please refer to the agency policy and procedures regarding this.		X	